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*Attorney for Plaintiff and the Proposed Class*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

**RICHARD TUSO**, individually, and  
on behalf of all others similarly situated,

*Plaintiff,*

v.

**ROCKET MORTGAGE LLC**, a  
Michigan company,

*Defendant.*

Case No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff Richard Tuso (“Tuso” or “Plaintiff Tuso”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Rocket Mortgage LLC (“Defendant” or “Rocket Mortgage”), to stop the Defendant from violating the Telephone Consumer Protection Act (“TCPA”) by making unsolicited calls/text messages to consumers who registered their phone numbers on the National Do Not Call Registry (“DNC”) and to consumers who have expressly requested that the calls

1 and text messages stop. Plaintiff also seeks to obtain injunctive and monetary relief  
2 for all persons injured by Defendant's actions. Plaintiff alleges as follows upon  
3 personal knowledge as to himself and his own acts and experiences, and, as to all  
4 other matters, upon information and belief, including investigation conducted by his  
5 attorneys.  
6

### 7 **PARTIES**

8  
9 1. Plaintiff Tusó is a Roseville, California resident.

10 2. Defendant Rocket Mortgage is a Michigan company headquartered in  
11 Detroit, Michigan. Rocket Mortgage conducts business throughout this District and  
12 the United States.  
13

### 14 **JURISDICTION AND VENUE**

15 3. This Court has subject matter jurisdiction over this action under 28  
16 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act,  
17 47 U.S.C. §227 ("TCPA").  
18

19 4. This Court has personal jurisdiction over Defendant and venue is proper  
20 in this District under 28 U.S.C. § 1391(b) because Defendant conducts business in  
21 California, including in this District, and the wrongful conduct leading to this case  
22 was directed by Defendant to Plaintiff Tusó who resides in this District.  
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## INTRODUCTION

5. As the Supreme Court explained at the end of its term this year, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls. The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a constant barrage of complaints. For nearly 30 years, the people’s representatives in Congress have been fighting back.” *Barr v. Am. Ass’n of Political Consultants*, No. 19-631, 2020 U.S. LEXIS 3544, at \*5 (U.S. July 6, 2020).

6. The National Do Not Call Registry allows consumers to register their telephone numbers and thereby indicate their desire not to receive telephone solicitations at those numbers. *See* 47 C.F.R. § 64.1200(c)(2).

7. A listing on the Registry “must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator.” *Id.*

8. When Congress enacted the TCPA in 1991, it found Americans were receiving more than 18 million calls every day. 105 Stat. 2394 at § 2(3).

9. By 2003, due to more powerful autodialing technology, Americans were receiving more than 100 million calls every day. In re Rules and Regulations Implementing the TCPA of 1991, 18 FCC Rcd. 14014, ¶¶ 2, 8 (2003).

1        10. The problems Congress identified when it enacted the TCPA have only  
2 grown exponentially in recent years.

3        11. Industry data shows that the number of robocalls made each month  
4 increased from 831 million in September 2015 to 4.7 billion in December 2018—a  
5 466% increase in three years.

6        12. According to online robocall tracking service “YouMail,” 5.1 billion  
7 robocalls were placed in May 2023 alone, at a rate of 164.0 million calls per day.  
8  
9 www.robocallindex.com. (Last checked June 4, 2023).

10        13. The FCC also has received an increasing number of complaints about  
11 unwanted calls, with over 150,000 complaints in 2020, and over 160,000 complaints  
12 in 2021. FCC, Consumer Complaint Data Center, www.fcc.gov/consumer-help-  
13 center-data.

14        14. “Robocalls and telemarketing calls are currently the number one source  
15 of consumer complaints at the FCC.” Tom Wheeler, *Cutting off Robocalls* (July 22,  
16 2016), statement of FCC chairman.<sup>1</sup>

17        15. “The FTC receives more complains about unwanted calls than all other  
18 complaints combined.” Staff of the Federal Trade Commission’s Bureau of  
19 Consumer Protection, *In re Rules and Regulations Implementing the Telephone*  
20

21  
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27 <sup>1</sup> <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls>

1 *Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, CG Docket No.  
2 02-278, at 2 (2016).<sup>2</sup>

3  
4 **COMMON ALLEGATIONS**

5 16. Defendant Rocket Mortgage is a mortgage lender that provides home  
6 loan and refinancing solutions to consumers.<sup>3</sup>

7  
8 17. Rocket Mortgage makes telemarketing calls to solicit its mortgage  
9 services to consumers.

10 18. Rocket Mortgage makes telemarketing calls and sends text messages to  
11 residential telephone consumers whose numbers are registered on the DNC, who  
12 have never provided their phone number to Defendant, and who never consented to  
13 receive phone calls from the Defendant.  
14

15 19. Employees that have been employed by Rocket Mortgage have listed  
16 cold calling as a core part of their job descriptions in LinkedIn profiles and job  
17 review websites like Indeed, including:  
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25 <sup>2</sup> [https://www.ftc.gov/system/files/documents/advocacy\\_documents/comment-staff-ftc-bureau-](https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf)  
26 [consumer-protection-federal-communications-commission-rules-](https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf)  
27 [regulations/160616robocallscomment.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf)

28 <sup>3</sup> <https://www.rocketmortgage.com/about>



**Malcolm Brown** (He/Him)

Software Development Manager | C-Level Presentations | B2B Consulting | Sales Strategy & Closing | Financial Services | Cross Fun



**Product Manager**

Rocket Mortgage · Full-time

Jul 2021 – Present · 2 yrs

Atlanta, Georgia, United States

- Leverage various contact methods such as cold calling or in-person meetings to secure profitable sales through firm provided leads and contact-lists, and self-generated leads (e.g., tradeshow) to complement commercial acquisition of product sales opportunities

- All prospecting must be facilitated with integrity, and in accordance with our values, with a focus on profitably delivering solutions commensurate with the prospective clients needs.

- Pipeline management (10 – 20% of time)

- Effectively manage a pipeline of prospective customers provided by American Express and self-prospect within territory (Corporate and Business prospects with revenue between \$10M-\$300M)

- Turn leads into prospects (contacts who know you and are willing to share info on available opportunity), follow up with contacts in CRM database, and probe for potential opportunities with the prospects

**Skills:** Communication · Community Outreach · Business Strategy · Team Leadership · Product Development · Strategic Planning

4



**Ebony Owens**

Senior Communications Specialist with Rocket Mortgage



**Rocket Mortgage**

1 yr 6 mos

Detroit, Michigan, United States



**Senior Communications Specialist**

Full-time

Aug 2022 – Present · 11 mos

On-site

Perform a heavy volume of inbound and outbound phone duties, including contacting and transferring clients to appropriate parties, cold calling and setting appointments

Effectively and efficiently perform work in the internal proprietary software and technology of the company

Participate in regular training on products and clients of the company

Filter leads on behalf of the company's clients by staying current on market and product shifts

Communicate carefully, intentionally and with accurate information to prioritize a positive experience for clients

Respond to all communication urgently, balancing phone calls, emails and chat messages appropriately

Work efficiently to meet team and personal goals

5

<sup>4</sup> <https://www.linkedin.com/in/malcb1/>

<sup>5</sup> <https://www.linkedin.com/in/ebony-owens-4790ba7b/>

## No work life balance, "bro" atmosphere

Mortgage Banker (Former Employee) - Detroit, MI - September 26, 2022

Training was good, post training work was purely cold calling. After a few months of that they throw you into purchase or refinance banking "usually not your choice." Hours and expectations become ridiculous with pretty bad pay. Not hitting goal penalizes you. Burn out is real. If you go for this position, i hope your single with no family and no other responsibilities. Then, you may make decent money. Maximum of 2 years at this position is typical.

6

## Kiss your personal life goodbye.

Mortgage Banker (Former Employee) - Remote - March 9, 2022

When you start working here, you will quite literally sell yourself to them. They keep pushing you by claiming the enormous commission checks you will make (sure you might make some good money) but, just make sure you're willing to put in 12-14 hours a day for 5-6 days per week. You will also be stuck doing the absolute worst job for the first two months, it will make you hate your life. "Hot leads" but you're actually just cold calling and forcing people into things that they don't want all while being underpaid during those months. If you are willing to put in the time and if cold calling people doesn't bother you than you could potentially make a lot of money but it just was not for me.

### ✓ Pros

Good training

### ✗ Cons

No work life balance, long hours, horrible job responsibilities.

7

20. As a likely result of the above, many consumers have posted complaints online regarding unsolicited telemarketing calls that they received from Defendant Rocket Mortgage, including complaints from consumers who were not able to get Rocket Mortgage to stop calling or texting them.

<sup>6</sup> <https://www.indeed.com/cmp/Rocket-Companies/reviews?fjobtitle=Mortgage+Banker&start=20>

<sup>7</sup> <https://www.indeed.com/cmp/Rocket-Companies/reviews?fjobtitle=Mortgage+Banker&start=40>



**Michael Lebowitz, CFA**  
@michaellebowitz

Rocket Mortgage must be very desperate. Getting 4-5 cold calls a day even after telling them to stop calling me.

8



**Lucas Graf @LJGraf · Oct 4, 2022**

OMG, they will not leave me alone either. I have a <3% rate with them already, how do they figure I would want to refi?!?!?



1



1



9

- “This is one of the numbers used by Rocket Mortgage, an incessant robo-caller, seven days a week. *We have told them to stop calling, but they persist.* Apparently they were clued in by a rogue real estate agent that we are selling our current home and looking to buy a home in another state. Our credit union and bank have offered us very competitive mortgage terms, so we surely do not need the rogues at Rocket whatever. Yes, where is their home base, North Korea, China, Russia?”(emphasis added)<sup>10</sup>
- “OMG. I've received 8 calls in the past 12 hours from this number. It does not say Rocket Mortgage, and they do not leave a message. I trust it's an agent of RM from the comments here. I've blocked the number now, but this borders on harassment!”<sup>11</sup>
- “Every single one of these is from my blocked messages list. I blocked their number in July because they would call me every single morning at 6 am. *I asked them several times to please stop contacting me.* The entire month of June and July was a daily call and daily request to not be contacted... It looks like thankfully they stopped but I wish there was a way to report them for this kind of harassment! Three straight months of constant contact after several formal requests not to be contacted.”<sup>12</sup> (emphasis added)

<sup>8</sup> <https://twitter.com/michaellebowitz/status/1567904424873410565?lang=en>

<sup>9</sup> *Id.*

<sup>10</sup> <https://800notes.com/Phone.aspx/1-866-390-5570>

<sup>11</sup> *Id.*

<sup>12</sup>

[https://www.reddit.com/r/mildlyinfuriating/comments/13ot77o/rocket\\_mortgage\\_harassed\\_me\\_for\\_months/](https://www.reddit.com/r/mildlyinfuriating/comments/13ot77o/rocket_mortgage_harassed_me_for_months/)



- 1 • “Rocket Mortgage had a supervisor interrupt their sales pitched when I  
2 said ‘stop, no, remove me from your call list’. Dude hops on the line and  
3 says ‘What are you trying to accomplish here?’ I said ‘you called me, I’m  
4 trying to accomplish that never happening again’. After 30 seconds of back  
5 talk I hung up, blocked the number, and now I just have to delete the 3 to  
6 5 voicemails they leave per day...”<sup>13</sup>
- 7 • “cold call solicitation”<sup>14</sup>
- 8 • “I have been getting multiple calls daily for MONTHS, not even for me.  
9 Yesterday I got TWELVE calls. After nicely telling the person ***I AM NOT***  
10 ***WHO THEY ARE CALLING, they continue to give their sales pitch.*** If I  
11 was inclined to need these services, I certainly WOULD NOT USE  
12 ROCKET MORTGAGE!”<sup>15</sup> (emphasis added)
- 13 • “Horrible, I got a call from them even though I am not looking to finance  
14 anything. A lady called me first and halfway through the call a guy just  
15 started talking to me. He ended up hanging up on me. Even if i was looking  
16 for home financing I would never use them based on the quality of the  
17 unsolicited call.”<sup>16</sup>
- 18 • “Multiple calls from 888-241-6243, asking to call back at this number 888-  
19 700-7369. VM says ‘Hi I’m \_\_\_ with Rocket Mortgage part of Quicken  
20 Loans, speak to you about that home financing information that you were  
21 looking into. Please give us a call back at 888-700-7369, talk soon’. Never  
22 requested any information.”<sup>17</sup>
- 23 • “He said his name was Ryan from Rocket Mortgage, that he was calling  
24 back. The caller did not have my right name when he left the message”<sup>18</sup>

<sup>13</sup>

[https://www.reddit.com/r/personalfinance/comments/wldfh7/i\\_have\\_received\\_80\\_calls\\_in\\_the\\_1  
ast\\_24\\_hours/](https://www.reddit.com/r/personalfinance/comments/wldfh7/i_have_received_80_calls_in_the_last_24_hours/)

<sup>14</sup> <https://lookup.robokiller.com/p/866-368-1552>

<sup>15</sup> <https://www.google.com/search?q=Rocket+Mortgage+google+maps>

<sup>16</sup> *Id.*

<sup>17</sup> <https://800notes.com/Phone.aspx/1-888-700-7369/3>

<sup>18</sup> *Id.*

- “she said she was with rocket mortgage. but i've never used them, or even used any intuit/quicken services or software before! possible phishing going on here!”<sup>19</sup>

21. In response to these calls, Plaintiff Tusó brings this case seeking injunctive relief requiring the Defendant to cease from violating the TCPA, as well as an award of statutory damages to the members of the Classes and costs.

### **PLAINTIFF TUSO’S ALLEGATIONS**

22. Plaintiff Tusó registered his cell phone number on the DNC on July 2, 2003.

23. Plaintiff Tusó uses his cell phone number for personal use only as one would use a landline telephone number in a home.

24. The calls that Plaintiff Tusó received from Defendant Rocket Mortgage were all received more than 31 days after Plaintiff registered his cell phone number on the DNC.

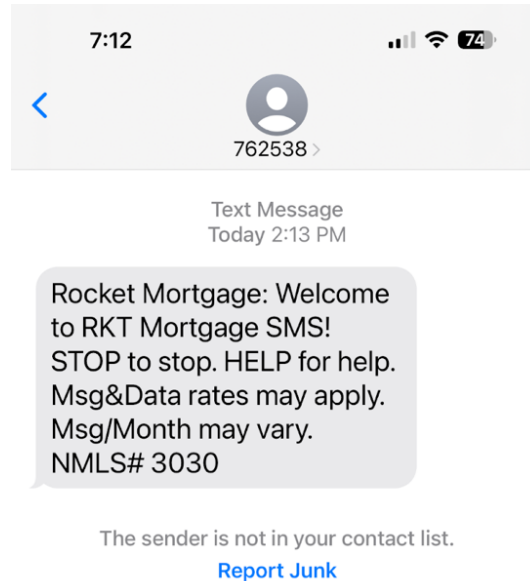
25. Plaintiff Tusó received an unsolicited phone call from Defendant Rocket Mortgage to his cell phone number at 2:13 PM on March 16, 2023, from 800-448-8133. The call was from a Rocket Mortgage employee soliciting refinancing services.

26. When 800-448-8133 is called, an automated system identifies the company as Rocket Mortgage.

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<sup>19</sup> <https://lookup.robokiller.com/p/800-448-8133>

27. Also at 2:13 PM on March 16, 2023, Plaintiff Tusó received an unsolicited text message to his cell phone number from Defendant Rocket Mortgage, from shortcode 762538:



28. According to RocketMortgage.com, 762538 is a shortcode owned/operated by Rocket Mortgage:

### How Do I Sign Up For Rocket Mortgage Mobile Alerts?

Sign up for Promotional Rocket Mortgage Text Alerts by texting **RATES** to the five-digit U.S. short code 762538. By signing up and choosing your subscription, you will receive 5 messages per month.

Text RKTCHAT to the five-digit U.S. short code 88606 to talk directly with a Home Loan Expert about your mortgage status. Messaging frequency varies.

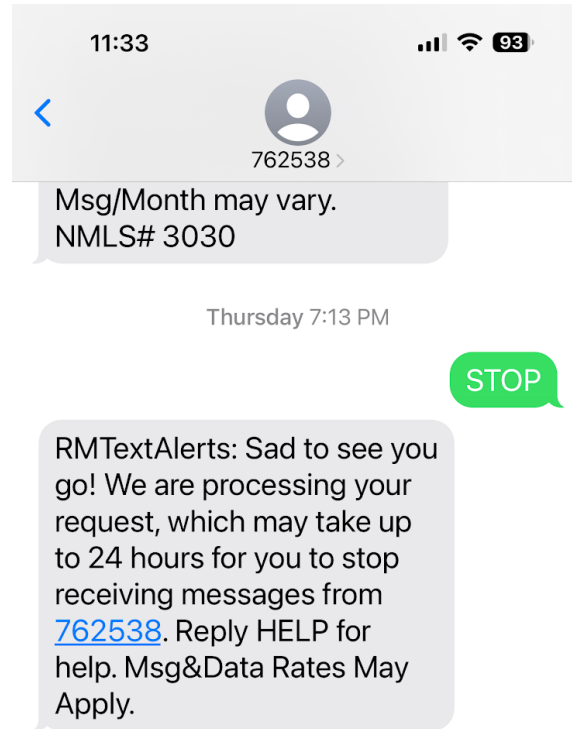
Rocket Mortgage Text Alerts are not mobile spam. The service is a recurring message program.

20

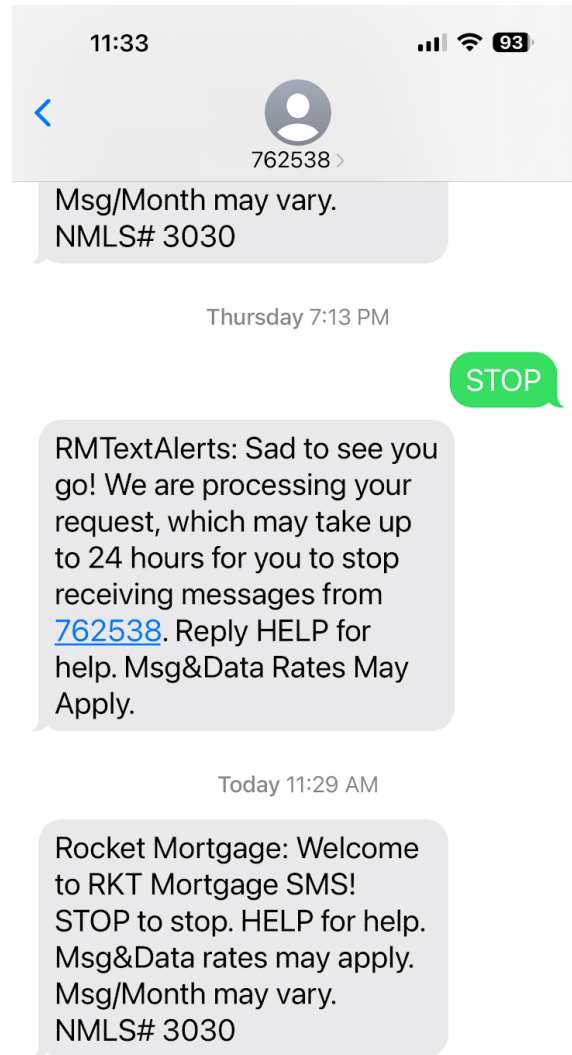
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<sup>20</sup> <https://www.rocketmortgage.com/legal/email-policy>

29. Plaintiff Tuso texted “STOP” to 762538 on March 16, 2023 at 7:13 PM. He received an immediate confirmation letting him know that he would not receive any more text messages:



30. Despite his stop request and confirmation that he was opted-out and that it would take no more than 24 hours to stop receiving text messages, Plaintiff Tuso received another unsolicited text message to his cell phone from Rocket Mortgage on March 20, 2023 at 11:29 AM, again from shortcode 762538:

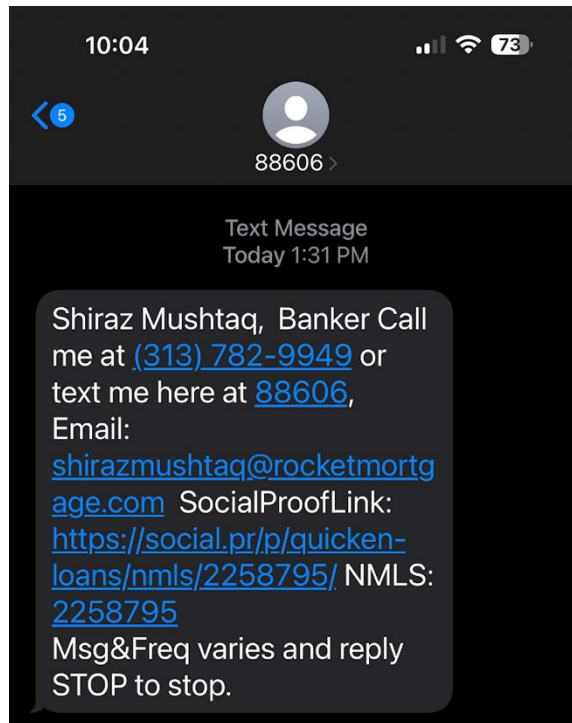


31. On March 20, 2023 at 1:30 PM, Plaintiff Tusó received an unsolicited phone call from Defendant Rocket Mortgage to his cell phone number, from 800-448-8133. The call was from an employee named Erika who was calling to solicit refinancing solutions to Plaintiff Tusó.

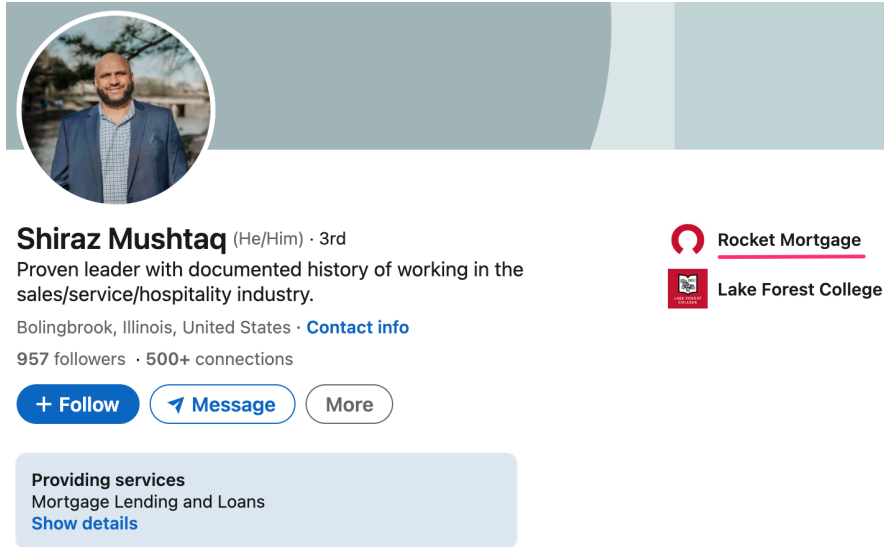
32. Plaintiff Tusó explained that he should not be receiving calls and text messages because he never signed up with Rocket Mortgage. Erika transferred Plaintiff Tusó to a Rocket Mortgage employee named Karmina.

33. Plaintiff again explained the situation to Karmina, explaining that he never signed up to receive any calls or texts from Rocket Mortgage. He then asked for his phone number and contact information to be removed from all of Rocket Mortgage's contact lists.

34. While Plaintiff Tusó was speaking to Erika and Karmina, he received another unsolicited text message from Rocket Mortgage to his cell phone, at 1:31 PM on March 20, 2023 from shortcode 88606:



35. As per the details provided in the text message shown above, Shiraz Mushtaq is a Banker working for Rocket Mortgage:



21

36. Plaintiff Tusó has never conducted any business with Defendant Rocket Mortgage, nor has he given his consent to receive telemarketing calls/text messages from or on behalf of Defendant Rocket Mortgage.

37. Plaintiff Tusó was not looking to get refinancing for his home.

38. The unauthorized telephone calls placed by Defendant, as alleged herein, have harmed Plaintiff Tusó in the form of annoyance, nuisance, and invasion of privacy, and disturbed the use and enjoyment of his phone, in addition to the wear and tear on the phone's hardware (including the phone's battery) and the consumption of memory on the phone.

39. Seeking redress for these injuries, Plaintiff Tusó, on behalf of himself and Classes of similarly situated individuals, brings suit under the TCPA.

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<sup>21</sup> <https://www.linkedin.com/in/shiraz-mushtaq-86654b3/>

## CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) and seeks certification of the following Classes:

**Do Not Call Registry Class:** All persons in the United States who from four years prior to the filing of this action through class certification (1) Rocket Mortgage called more than one time, (2) within any 12-month period, (3) where the person's residential telephone number had been listed on the National Do Not Call Registry for at least thirty days, (4) for substantially the same reason Defendant called Plaintiff Tusó.

**Internal Do Not Call Class:** All persons in the United States who from four years prior to the filing of this action through class certification (1) Defendant Rocket Mortgage called/texted more than one time on their residential telephone number, (2) within any 12-month period (3) for substantially the same reason Defendant called/texted Plaintiff Tusó, (4) including at least once after Defendant's records reflect the person requested that they stop calling/texting.

41. The following individuals are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, their subsidiaries, parents, successors, predecessors, and any entity in which either Defendant or their parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Classes; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against the Defendant has been fully and finally



1 adjudicated and/or released. Plaintiff anticipates the need to amend the Class  
2 definitions following appropriate discovery.

3       42. **Typicality and Numerosity:** On information and belief, there are  
4 hundreds, if not thousands of members of the Classes such that joinder of all  
5 members is impracticable, and Plaintiff a member of the Classes.

6  
7       43. **Commonality and Predominance:** There are many questions of law  
8 and fact common to the claims of the Plaintiff and the Classes, and those questions  
9 predominate over any questions that may affect individual members of the Classes.  
10 Common questions for the Classes include, but are not necessarily limited to the  
11 following:  
12

- 13  
14       (a) Whether Defendant's conduct violated the TCPA;  
15       (b) Whether Defendant placed multiple calls within a 12-month period to  
16 Plaintiff Tusó and other consumers whose telephone numbers were  
17 registered with the DNC for at least 30 days of the time of each call;  
18       (c) Whether Defendant engaged in telemarketing without implementing  
19 adequate internal policies and procedures for maintaining an internal  
20 do not call list;  
21       (d) Whether members of the Classes are entitled to treble damages based  
22 on the willfulness of Defendant's conduct.

23       44. **Adequate Representation:** Plaintiff Tusó will fairly and adequately  
24 represent and protect the interests of the Classes, and has retained counsel competent  
25 and experienced in class actions. Plaintiff has no interests antagonistic to those of  
26 the Classes, and Defendant has no defenses unique to Plaintiff Tusó. Plaintiff and  
27 his counsel are committed to vigorously prosecuting this action on behalf of the  
28

1 members of the Classes, and have the financial resources to do so. Neither Plaintiff  
2 nor his counsel have any interest adverse to the Classes.

3       45. **Appropriateness:** This class action is also appropriate for certification  
4 because the Defendant has acted or refused to act on grounds generally applicable  
5 to the Classes as a whole, and thereby requiring the Court's imposition of uniform  
6 relief to ensure compatible standards of conduct toward the members of the Class  
7 and making final class-wide injunctive relief appropriate. Defendant's business  
8 practices apply to and affect the members of the Class uniformly, and Plaintiff's  
9 challenge of those practices hinges on Defendant's conduct with respect to the  
10 Classes as a whole, not on facts or law applicable only to Plaintiff Tusó.  
11 Additionally, the damages suffered by individual members of the Classes will likely  
12 be small relative to the burden and expense of individual prosecution of the complex  
13 litigation necessitated by Defendant's actions. Thus, it would be virtually impossible  
14 for the members of the Classes to obtain effective relief from Defendant's  
15 misconduct on an individual basis. A class action provides the benefits of single  
16 adjudication, economies of scale, and comprehensive supervision by a single court.

22                   **FIRST CLAIM FOR RELIEF**  
23                   **Telephone Consumer Protection Act**  
24                   **(Violation of 47 U.S.C. § 227)**

25                   **(On Behalf of Plaintiff Tusó and the Do Not Call Registry Class)**

26       46. Plaintiff Tusó repeats and realleges the prior paragraphs of this  
27 Complaint and incorporates them by reference herein.

1        47. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c),  
2 provides that "[n]o person or entity shall initiate any telephone solicitation" to "[a]  
3 residential telephone subscriber who has registered his or his telephone number on  
4 the national do-not-call registry of persons who do not wish to receive telephone  
5 solicitations that is maintained by the federal government."

7  
8        48. Any "person who has received more than one telephone call within any  
9 12-month period by or on behalf of the same entity in violation of the regulations  
10 prescribed under this subsection may" may bring a private action based on a  
11 violation of said regulations, which were promulgated to protect telephone  
12 subscribers' privacy rights to avoid receiving telephone solicitations to which they  
13 object. 47 U.S.C. § 227(c).

15  
16        49. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to  
17 be initiated, telephone solicitations to telephone subscribers such as Plaintiff Tusó  
18 and the Do Not Call Registry Class members who registered their respective  
19 telephone numbers on the National Do Not Call Registry, a listing of persons who  
20 do not wish to receive telephone solicitations that is maintained by the federal  
21 government.  
22

23  
24        50. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff Tusó and  
25 the Do Not Call Registry Class received more than one telephone call in a 12-month  
26

1 period made by or on behalf of the Defendant in violation of 47 C.F.R. § 64.1200,  
2 as described above.

3  
4 51. As a result of Defendant's conduct as alleged herein, Plaintiff Tusó and  
5 the Do Not Call Registry Class suffered actual damages and, under section 47 U.S.C.  
6 § 227(c), are entitled, inter alia, to receive up to \$500 in damages for each of such  
7 violations of 47 C.F.R. § 64.1200.  
8

9 52. To the extent Defendant's misconduct is determined to be wilful and  
10 knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of  
11 statutory damages recoverable by the members of the Do Not Call Registry Class.  
12

13 **SECOND CLAIM FOR RELIEF**  
14 **Telephone Consumer Protection Act**  
15 **(Violation of 47 U.S.C. § 227)**

16 **(On Behalf of Plaintiff Tusó and the Internal Do Not Call Class)**

17 53. Plaintiff Tusó repeats and realleges the prior paragraphs of this  
18 Complaint and incorporates them by reference herein.

19 54. Under 47 C.F.R. § 64.1200(d), "[n]o person or entity shall initiate any  
20 call for telemarketing purposes to a residential telephone subscriber unless such  
21 person or entity has instituted procedures for maintaining a list of persons who  
22 request not to receive telemarketing calls made by or on behalf of that person or  
23 entity. The procedures instituted must meet the following minimum standards:  
24  
25  
26  
27

1 (1) Written policy. Persons or entities making calls for  
2 telemarketing purposes must have a written policy, available  
upon demand, for maintaining a do-not-call list.

3 (2) Training of personnel engaged in telemarketing. Personnel  
4 engaged in any aspect of telemarketing must be informed and  
trained in the existence and use of the do-not-call list.

5 (3) Recording, disclosure of do-not-call requests. If a person or  
6 entity making a call for telemarketing purposes (or on whose  
7 behalf such a call is made) receives a request from a residential  
8 telephone subscriber not to receive calls from that person or  
9 entity, the person or entity must record the request and place the  
subscriber's name, if provided, and telephone number on the do-  
10 not-call list at the time the request is made. Persons or entities  
11 making calls for telemarketing purposes (or on whose behalf  
such calls are made) must honor a residential subscriber's do-not-  
12 call request within a reasonable time from the date such request  
is made. This period may not exceed thirty days from the date of  
13 such request. If such requests are recorded or maintained by a  
14 party other than the person or entity on whose behalf the  
telemarketing call is made, the person or entity on whose behalf  
15 the telemarketing call is made will be liable for any failures to  
honor the do-not-call request. A person or entity making a call  
16 for telemarketing purposes must obtain a consumer's prior  
express permission to share or forward the consumer's request  
17 not to be called to a party other than the person or entity on whose  
18 behalf a telemarketing call is made or an affiliated entity.

19 (4) Identification of sellers and telemarketers. A person or entity  
20 making a call for telemarketing purposes must provide the called  
party with the name of the individual caller, the name of the  
21 person or entity on whose behalf the call is being made, and a  
telephone number or address at which the person or entity may  
22 be contacted. The telephone number provided may not be a 900  
23 number or any other number for which charges exceed local or  
24 long distance transmission charges.

25 (5) Affiliated persons or entities. In the absence of a specific  
26 request by the subscriber to the contrary, a residential  
subscriber's do-not-call request shall apply to the particular  
27 business entity making the call (or on whose behalf a call is

made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

55. Defendant placed calls to Plaintiff Tusó and members of the Internal Do Not Call Class without implementing internal procedures for maintaining a list of persons who request not to be called by the entity and/or by implementing procedures that do not meet the minimum requirements to allow Defendant to initiate telemarketing calls/text messages.

56. The TCPA provides that any “person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may” bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c)(5).

57. Defendant has, therefore, violated 47 U.S.C. § 227(c)(5). As a result of Defendant’s conduct, Plaintiff Tusó and the other members of the Internal Do Not Call Class are each entitled to up to \$1,500 per violation.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Tusó individually and on behalf of the Classes,  
prays for the following relief:

- a) An order certifying this case as a class action on behalf of the Classes, as defined above; appointing Plaintiff Tusó as the representative of the Classes; and appointing his attorneys as Class Counsel;
- b) An award of actual and/or statutory damages and costs;
- c) An order declaring that Defendant's actions, as set out above, violate the TCPA;
- d) An injunction requiring Defendant to cease all unsolicited calling activity, and to otherwise protect the interests of the Classes; and
- e) Such further and other relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff Tusó requests a jury trial.

Respectfully Submitted,

**RICHARD TUSO**, individually, and on  
behalf of those similarly situated individuals

DATED this 19th day of June, 2023.

By: /s/ Rachel E. Kaufman

Rachel Elizabeth Kaufman

Kaufman P.A.

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Classes*